CONDITIONS OF PERMANENT WORLD PEACE.*

THE human race has with more or less success worked out many difficult governmental, political and sociological problems, but all would doubtless agree that it has never set for itself a more serious task than the discovery and application of a feasible and practicable plan that will abrogate the necessity of war as a mode of redressing international disputes.

Of late years considerable progress has been made in the organization and establishment of "arbitral courts" to which the nations may submit their disputes, and "commissions of inquiry" whose duty it is to ascertain the facts in an international controversy. Steps have also been taken to encourage and facilitate the effectual use of the "good offices" of mutually friendly nations, and the use of mediation and conciliation. And the time seems near when the nations may establish an international court, with judicial, instead of merely arbitral, authority and jurisdiction, which will perhaps be able to deal with certain cases with which courts of arbitration could not satisfactorily cope.

A judicial court is fully organized in advance of litigation, so that its members are not selected by the parties to the controversy and are able to decide impartially between the contentions of the litigants. On the other hand, an arbitral court is composed of members selected by the parties after the dispute has arisen. From this circumstance there usually results more or less of a tendency on the part of the arbitrators to regard themselves not as impartial judges, but as advocates or representatives or personal friends of the party selecting them.

While therefore a judicial court will attempt to arrive at the facts and the law governing the case, and thus reach a decision, the tendency of an arbitral court in many cases is to conciliate, mediate or compromise the claims of the litigants,

*EDITORIAL NOTE: This article comprises the substance of the introductory chapter of a book on this subject which the author hopes to publish in the near future.

so that its decision is quite likely to be unsatisfactory to both parties. The decision of the judicial court, on the other hand, will generally be favorable to one party or the other and, while of course eminently satisfactory to the successful litigant, will often, if fair and just, be less objectionable to the unsuccessful party than would be a mere compromise.

It seems the belief of many that the mere establishment of a judicial court to which the nations may resort for a settlement of their dispute will in itself go far to solve the problem of international wars. But this can scarcely be said to be the conviction of those who have given the most profound thought and study to the subject. They realize that the field of usefulness of such a court is limited, as is that of the court of arbitration, the commission of inquiry, conciliation and mediation, the good offices of mutually friendly nations and diplomatic correspondence. Each has its appropriate function in settling or helping to settle certain sorts of international controversies; but, despite all, there is a large and important field of disputes, for the settlement of which none of these is in the least adequate.

An analysis,—even an incomplete analysis,—of the various sorts of controversies that may arise between nations suffices to show how many and how constantly recurring are the disputes in which the modes of redress above mentioned are of no value.

If we classify all international controversies into two great classes:—

First, disputes behind which, on one side or on both, lie ulterior evil designs of aggression and attack upon the rights of other nations; and

Second, disputes arising extemporaneously and without ulterior designs:—it is obvious that none of those of the first class would be subject to treatment in any of the modes already considered, and indeed that, under present conditions, nothing but war or the fear of war would prove adequate to prevent the threatened attack. The offender in such case would doubtless put forward untenable claims as an excuse for his aggres-

sion, but such claims would not be justiciable, that is, capable of being settled in a court of justice or arbitration, simply because the offender has never intended, and would not permit, them to be thus settled. For the like reason, commissions of inquiry, conciliation, mediation, good offices, and diplomatic protests would all alike be of no avail. His design is to use force or fraud against his neighbor and, under existing conditions, nothing but force or the threat of it will deter him.

For example, suppose a nation, urged by dynastic, military or territorial ambitions, bent on taking the territory of its neighbor; or suppose it, influenced by cupidity, determined to capture forcibly or fraudulently and without regard to the rights of its neighbors certain trade routes or seats of commercial influence, or resolved by the use of tariffs or of a favorable geographical position to engage in unfair competition against other nations; or suppose it, influenced by a spirit of nationalism, to contemplate through the use of force a union of those of its race who are the subjects of neighboring powers; or suppose it filled with a desire to overawe and bully its neighbors, so that it indulges to a dangerous extent in militarism and jingoism. These are not uncommon manifestations among the nations, but they are not justiciable or remediable in any way except by war or the fear of it.

This however is not the only class of dispute wherein the remedies before mentioned would be often inadequate to prevent war. Even in the case of honest disputes behind which lurk no evil designs of aggression, many, indeed most, would not be justiciable, and could only be adjusted, short of war, through diplomacy, the good offices of mutual friends, mediation, compromise or possibly arbitration.

Among this group of controversies may be classed:

1. Misunderstandings and wrongs committed unintentionally or by accident or mistake.

Such disputes as these lose all their importance as soon as the facts are understood and usually are readily adjusted through diplomatic correspondence. They need no special consideration.

2. Disputes arising from invasions of national honor, pride or prestige.

If these invasions result from mere accident, mistake or innocent misunderstanding, they belong properly under the first head and involve little danger of war. They are dismissed with a diplomatic explanation or apology.

But if they are intentional,—the result of a bona fide insistence upon its rights by each nation, confident in the rightfulness of its attitude and assured that it would be injurious to its honor, dignity, interest or safety to recede, then the controversy becomes dangerous and carries the seeds of international complications. Such disputes, involving as they do national honor or national prestige,—the position of the nation among its fellows,—are not easily justiciable, but must ordinarily be adjusted, short of war, by the good offices of mutual friends, mediation, suggestions or offers of compromise and the like,—only occasionally, if turning on questions of fact or law, by arbitral or judicial action.

3. The next class of bona fide international disputes consists of those which arise from clashes of sincere and honest national policy, such as the Monroe Doctrine, the Balance of Power, national and racial sympathies, military preparedness, commercial policies, etc.

Such disputes are neither justiciable nor arbitrable. We cannot for instance conceive, under existing conditions, of the American people agreeing to submit to a judicial or arbitral tribunal the question whether a strong foreign power shall be permitted to seize territory in Central or South America or in Canada. It is not a question of law or justice at all, but one of policy, of self-preservation, the decision of which would never willingly be left to an alien body, be it a judicial court or an arbitral tribunal.

And what is true of the Monroe Doctrine, as it applies to America, is equally true of the great principle of the Balance of Power in Europe, of the open door to trade in China, of the right of a nation to prepare itself in a military sense against dreaded attacks, of great nationalistic and racial movements like Pan-Slavism, Pan-Germanism and others. Disputes like these,

arising from sources of profound national instinct or policy, cannot be settled or checked by judicial or arbitral decrees.

If the execution of such national policies results in the invasion of the rights and liberties of other States, there is at present, aside from conciliatory and persuasive measures, no recourse save to war or the threat of it. The establishment of international judicial or arbitral courts would be of no avail.

4. Another class of disputes between nations would consist of those of long standing, arising from some long past act of gross injustice or forcible depredation, such as the annexation of territory formerly belonging to another nation or the absorption of a nation's liberty or independence. That these unjust acts of a distant past are not always forgotten is proved, if proof be needed, by the French yearning for Alsace and Lorraine, the Italian call to "Italy Unredeemed" and the Polish vision of a reunited Poland.

Such festering sores as these upon the international body are not curable by judicial or arbitral treatment. They can only be healed, if at all, by the slow lapse of time or by the bleeding process of war.

5. Another class of disputes consists of those arising from breach of treaty.

These may often be adjusted without resort to war. The breach may be regarded as an abrogation of the treaty, justifying the other party in regarding it as void. In many cases, doubtless, the breach would present an arbitral or justiciable question, in the settlement of which the international courts might take a prominent part. But in other cases the breach would present political, rather than justiciable, questions, and for the decision of these courts would be useless.

For example, if the treaty be of such a character that the existence, dignity or prestige of the parties to it or of one of them would be gravely threatened by its violation, or if the observance of it by one of the parties should become morally impossible by reason of the destructive damage such observance would inflict upon itself or upon another nation,—it is evident that the questions raised by the breach of such a treaty would

be of a political, rather than of a legal, character, which no nation could well be expected to leave to the decision of a judicial or arbitral tribunal.

6. The last class of international controversies to which reference will be made would embrace those arising from disputed facts or from disputed principles of law applicable to the facts. Granted that both litigants are willing to rest upon their legal rights, these constitute clearly and distinctly justiciable questions, to the decision of which an international court would be fully competent.

While a considerable proportion of the disputes likely to arise between nations may be expected to partake more or less of this character, not so many would be entirely of this sort, but rather partly of this class and partly belonging to one of the other classes before mentioned. And the more the characteristics of other sorts of disputes enter into the case, the less the chance of the questions raised being justiciable.

Although the enumeration above given is perhaps not exhaustive of all sorts of disputes that may arise between nations, it suffices to demonstrate how few of such cases would be susceptible of settlement through international courts. Under existing conditions therefore it cannot be supposed that the establishment of international judicial or arbitral tribunals would go very far to prevent wars between nations.

The fact is that these, as well as all the other remedies that have been mentioned, have for their object the redress of grievances after they have arisen. They do not propose or attempt to prevent the original rise of the grievance. The international doctor has habitually treated the symptoms and effects of the disease, but has never tried to go to the root of the trouble, find the cause of the disease and eradicate that cause. Not until this is recognized as the scientific method of dealing with the problem will its solution be near.

If it were possible today to erect a world court, with the widest judicial jurisdiction conceivable, and to gain or compel the assent of every nation to submit to that tribunal every international dispute of a justiciable character, the world would be but little better off so far as the actual danger of war is concerned. While

human nature remains as it is, with no other restraint than that of an international court, there would be the same national ambitions and greed, the same use or dread of force or fraud, the same need of preparedness against attack, the same fear of the stronger by the weaker and smaller States, and often the same conquest and destruction of the territories and liberties of the less powerful of the family of nations. Justiciable disputes alone could be settled by the court, and wars grow more frequently out of political, than out of justiciable or legal controversies.

But, it will be said, if the experience of the United States be examined, it will be found that the Supreme Court has habitually exercised the jurisdiction to decide disputes arising between the sovereign States of the American Union. It will be pointed out that, in all the many interstate controversies so far brought before that court, it has never yet failed to find that the dispute was justiciable, nor declined jurisdiction, on the ground that the question was political. The consequence has been that all these disputes have been amicably settled, and neither war nor the threat of it has arisen out of any of them. Why then, it may be asked, would not the analogy hold in the case of an international court, if the nations would agree to submit their differences to its cognizance?

If it could be shown that the happy results apparent in the American system were due solely or even chiefly to the establishment of a court with jurisdiction to decide interstate disputes, the analogy between it and a world court would indeed be striking, and the presumption strong that like results would follow as between the nations upon the establishment of an international court. But when we contrast the circumstances that would surround the two tribunals, we find there is no real,—at least no close,—analogy between them.

The powers that may be exercised by one nation towards another may be classed as *political* and *legal* powers respectively. Out of the exercise of political powers would arise for the most part political or non-justiciable disputes; out of the exercise of legal powers would arise the legal or justiciable controversies. The only way then to eliminate the possibility of any disputes between nations other than those which are justiciable or sus-

ceptible of judicial or arbitral determination would be to eliminate the international or interstate political powers, which are the war-breeding powers.

This elimination, as between the States of the American Union, the Constitution of the United States has accomplished; as has also the constitution of every federal republic or empire in the world today as between its component States. It is because of this great accomplishment, not because of the mere establishment of a court with jurisdiction to determine interstate disputes, that such disputes are always justiciable and susceptible of judicial settlement.

An examination of the Constitution of the United States, for example, will reveal that each of the United States has surrendered, either entirely or to the States United to be exercised by them all jointly and not by each separately, the following powers: (1) to declare war; (2) to keep troops (exclusive of militia) and ships of war; (3) to acquire the territory of another State, except by consent of the legislatures of the States concerned as well as of Congress; (4) to levy duties on imports and exports; (5) to regulate interstate or foreign commerce; (6) to make treaties or alliances with foreign States; (7) to make agreements or compacts with other States except with the consent of Congress; and (8) to deny to citizens of sister States the rights and immunities of citizens. The surrender of these political and military powers has at one stroke removed from the realm of interstate relations the right and the ability of each State to exert political power or influence as against sister States of the Union. It follows that no dispute thenceforth arising between two of the United States can be political in character, but must always be within the limit of legal and justiciable controversies.

How different the existing condition of the nations of the world! They have not only not surrendered to the whole jointly their individual power to declare war or keep troops and war vessels, but have been steadily and persistently increasing their armaments and alliances year by year. They therefore not only possess inherently the force to compel other weaker States to do their will, but their ability to use that force promptly and efficiently constantly increases.

Possessing this inherent and constantly augmented power, they are more and more subjected to the temptation to exert it unlawfully and tyrannically against weaker sister nations, because they have never surrendered, as have the American States, the power to acquire the territory of another State without its consent, or to maltreat its citizens or subjects, or the right to levy heavy tariff duties on international trade or to secure control, as far as might be within their power of international commerce, trade-routes and seats of commercial influence regardless of the just and equal rights of other nations. None of these powers, nor the right to make alliances whether for aggressive or defensive purposes, nor the right to make or break treaties with other nations have they surrendered. And out of the exercise of these powers arise the so-called "political" questions which are usually not justiciable, having no relation to abstract justice but being based on theories of policy, self interest or self preservation.

If then we would have an international court serve the same purpose between the nations as a supreme federal court among the component States of a federal republic like the United States or a federal empire like that of Germany, some device must be utilized that will eliminate "political" controversies between them, arising out of the exercise of interstate "political" powers, thus reducing their disputes to those of a legal or justiciable nature.

This can only be accomplished by the establishment of some sort of compact or league between the nations whereby each surrenders some portion of its present independence for the sake of peace.

If the question be asked whether the attainment of this end is worth the sacrifice of a certain portion of the existing independence of the nations, the answer must obviously depend upon the desirability of the end to be attained and upon the amount of sacrifice involved. These values in turn must be measured by the yard stick of the reader's convictions and judgment.

Prior to the great European war, few of this generation would have been found of an imagination so vivid as to possess a real vision of the horrors of modern warfare, or so impressed thereby as to advocate the slightest surrender of the sovereignty and independence of the individual nation in order to secure the bless-

ings of a rightful and abiding peace. But that war has searched the hearts of many, especially in the bleeding and impoverished countries of Europe. The world is prepared to examine realities and discard ancient illusions and shibboleths which would formerly have presented impassable barriers to freedom of thought.

Has not the general conception of the sovereignty and independence of nations hitherto been somewhat of an illusion,—somewhat of form without substance,—somewhat of a mental confusion between an unbridled license and a true liberty and independence? Is any nation in the world today absolutely sovereign and independent in the full sense of that term? Are they not all bound in chains by inviolable treaties and by national necessities of policy; greed, jealousy, dread of attack? Even prior to the great war have not the nations, despite their boasted independence, groaned under the burdens of armaments, and will not those groans be doubled and redoubled when they feel the full weight of the burdens added by the war? Are they not constantly haunted by fears and suspicions? Are these the indications of national freedom and independence or of an international license that usurps the name?

Would it then after all be such a violent break with past realities,—not illusions,—if the nations should reach an agreement whereby each would surrender to the joint exercise of all that portion only of its so called independence which is susceptible of use to the injury of its sister nations? Would not its own feeling of peaceful security from the attacks of others compensate each for the surrender of the right to inflict injustice and harm on others? It is not suggested that any part of its rightful and just independence be sacrificed, but only that portion which is either itself wrongful and unjust or susceptible of such exercise as to inspire sister nations with suspicion and fear of unjust and oppressive consequences.

This would seem not an onerous price to pay for national security and insurance against future devastating wars, provided such checks are supplied as would effectually induce the league to which these powers would in large measure be confided to exercise them impartially for the best interests of all the component nations and free them from all fear that its powers might be exerted to their oppression or destruction.

The universal experience of mankind does not encourage us to repose much confidence in the power of mere international public opinion to inhibit that class of political dispute which so often leads to war. Nor is this surprising when we remember that to its effective operation two conditions are essential,—knowledge of the fundamental facts of the controversy and time for the crystallization of sentiment upon the merits of it. These conditions, difficult enough of attainment in national affairs, are in most cases impossible of fulfilment in the more complex international controversies, at least until too late to avert disastrous consequences. International opinion cannot be relied upon to prevent war, however potent it may be to compel nations to find or invent plausible excuses for breaking the peace or in influencing the final adjustment between the combatants.

Nor can popular opinion within the disputant States themselves be expected to exert much of an inhibitive power. The people as a whole are accustomed to follow their leaders, and know too little of the details of international relations to be able to judge properly for themselves of the real merits of such controversies. It is easy for the national leaders, if they are so disposed, to give out, keep back or distort information so as to make the worse appear the better reason and to misguide the nation. No real security can be expected from this quarter.

There remains then only some form of international organization or league whereby either the mischievous exercise of interstate political powers shall be adequately curbed or else machinery devised for the peaceful solution of the political disputes sure to result from the uncontrolled exercise of those powers. If the former alternative be chosen, by controlling the causes of war the nations secure themselves against war itself. If the latter be adopted, the causes of international strife are left to flourish in full vigor, while the effort is expended on the attempt to check the evil consequences.

So far as the surrender of sovereignty and independence is concerned, there would seem to be little to choose between them. An international league for the enforcement of compulsory arbitration or conciliation, with a covenant by all to unite in war or other forcible measures against any nation declining to engage in either form of settlement (however sacred and dear to it the

matter involved) can hardly be regarded as a conservator of the unlimited sovereignty and independence of the individual nations. True it would leave them free, as at present, to exert their political powers to the injury and oppression of their neighbors, but, were the plan successful, they would be held to so strict an accountability for the resulting injuries that they would in effect cease to enjoy the sovereign independence they now possess to bully, oppress and defraud other nations as they please.

But the practical obstacles in the way of the successful operation of a league formed on this plan would appear to be insuperable. How would the necessary concert of action be secured? How would each nation's proportion of troops, ships and expenditure be ascertained? Who would command? How induce the people of the several States of the league to look with favor upon a war waged to compel a sister and perhaps distant State to adjudicate questions that to them would often appear to involve mere abstract technical matters of national policy or international law, about which most of them would know little and care less? Or if a nation were jealous or suspicious of the superior strength, military or commercial, of the States threatened with attack, how would its zealous support be secured of a concerted action that would prevent such attack? Would not the situation be equally difficult if a nation of the league called on to intervene were commercially or diplomatically on peculiarly friendly terms with the aggressor? Who would settle the final terms of peace?

Should such difficulties as these be overcome, there would still remain the most permanent and invincible obstacle of all,—the fact that the controversy would not, in many cases, be justiciable at all, but political and of such importance to one or both of the States involved that no outside intervention would be competent to settle it.

It would seem therefore that the plan of a league to enforce peace by war or the threat of it would be foredoomed to failure. Indeed it is but the principle of the Balance of Power in another form; and as it has always been a matter of doubt whether that principle has not caused more wars than it has prevented, so it

may be questioned whether such a league could be more successful.

The remaining alternative would be the formation of an international league, which shall insure peace not by war but by law. This would imply the organization of a federal international government by a compact, under which the nations, with proper safeguards, would surrender either absolutely or to the control of all jointly their power to injure or work injustice upon their sister States.

The powers that need be thus surrendered are few, but very important to the attainment of the end desired. They may be briefly enumerated as follows:

1. The grant to the league, on the one hand, of the power to regulate and control international commerce and communication through specific legislation for the purpose, and, on the other, the surrender by the component nations of the rights to tax or burden imports, exports and the instrumentalities of international commerce;

2. The surrender by the component nations of the right to acquire any portion of the territory of another nation, without the consent both of the latter nation and of the international government;

3. A like surrender of the right to treat tyrannically or oppressively the citizens of other States in their persons or property rights.

4. A surrender of the right to keep more than a reasonable proportion of troops and war vessels, adequate to the task of internal police, while granting to the joint government the right to keep sufficient troops and ships to guarantee the protection of all;

5. A surrender of the right to make treaties of alliance and confederation individually with any nation, or any treaty that would violate the compact of union, while granting to the joint government the power to make treaties with any nation, not a member of the league, concerning matters to which the powers granted to the joint government shall extend; and

6. A surrender of the right to declare or make war, unless in

case of invasion or the imminent danger thereof, while granting to the league the right to declare war against States not members of the Union.

Conceding the surrender by the nations of the first three of the powers above enumerated, there would be little need of the exercise of the last three, so that the component nations would in reality be called upon to resign only three items of their present independence, namely; the right to control international commerce, but only to an extent that would be considered by the joint judgment of all as detrimental to the general interest (though, as to the right to tax or burden imports, exports or the instrumentalities of international commerce, the surrender should be absolute); the right to acquire the territory of another State to the detriment of that State or of the joint interest of all; and lastly, the right to treat unjustly or oppressively, according to certain designated standards, the citizens of other States while within their borders.

Thus would be achieved freedom of trade, freedom of aliens from injustice to their persons and property, and freedom from the dread of territorial conquest within or near the borders of any State. When these shackles have been stricken from the limbs of the nations, the causes of international suspicion, jealousy and war are practically swept away, and with them war itself.

But the nations would prefer,—and rightly,—rather to bear the ills they have than fly to others they know not of, and unless they can be assured that in the destruction of these age-long chains they do not find other and stronger fetters, they would be justified in declining to try the experiment. Even though it be granted that the general principles above enunciated are sound, there still remains the great task of devising such checks and balances as will render it impossible that this joint government shall encroach upon the just liberties of the component States or their people. Due care must be taken that a majority of the component nations shall not engage in oppressing a minority, or even a single State; that a majority composed of the small States shall not override the united will of the fewer but more influential Great Powers, and on the other hand that the

latter shall not override the wishes of a majority composed of the smaller States; that the international government, both in its legislation and executive departments, be at all times subject to the joint control of the component States; that while a small minority shall not be permitted to block the legitimate will of the majority of the States in the ordinary conduct of the international business, yet on the other hand, in regard to matters of vital importance, a bare majority of States shall not be permitted complete control; that the international affairs of a State be not interfered with at all by other States, acting jointly or separately; that a component nation do not persistently neglect or disregard its pledged obligations to the league or to sister States;—in short, that all needful precautions be taken to insure the administration of the joint international government in the common interest of all, as evidencd by the free and untrammelled voice of each in the international council.

Difficult as are the problems involved in the framing of such a compact, they are capable of solution, if only the nations will approach them with the sincere desire to secure national freedom in the place of the international license that now prevails and to substitute a reign of law among them for the rule of force and fraud.

Raleigh C. Minor.

UNIVERSITY OF VIRGINIA.